COUNTY COURT CASES.

William Nash v. Andrew Sharp and Owen Senate.

(In the County Court of the County of Wentworth.)

Overholding Tenants Act.

The Overholding Tenancy Act of the first session of the Legislature of Ontario, gives jurisdiction to the County Judge in cases when the tenancy has been determined by forfeiture for breach of contract.

Service of the demand of possession must be personal; and service of notice of inquisition, must either be personal or at the place of abode of the tenant.

[Hamilton, November, 1868.]

The facts in this case were as follows. Sharp held under a lease for a term of years, terminating 1st March, 1869, and had paid all rent due up to 1st September, 1868. The landlord applied in November, under the Overholding Tenancy Act of the first session of the Province of Ontario, alleging a forfeiture of the lease for breach of covenant. The lease contained a proviso for making it void on non-performance of covenants by lessee, and the breaches complained of were, neglecting to fall plough 20 acres, to clear 24 acres newly seeded down in clover, taking straw off the premises and subletting or assigning the term to Senate. The lessee Sharp it was alleged had left the country. The demand of possession and notice of holding inquisition were served on Senate. Senate appeared and filed an affidavit denying the sub-letting or assignment of the term to him, and alleging that he was merely left in charge of the premises to take care of them for Sharp.

R. R. Waddell, for the landlord.

J. W. Ferguson, for the tenants, contended that the Act did not apply to cases where the lease was determined by forfeiture, and that service both of the demand of possession and notice of inquisition must be personal. He also denied the truth of the alleged breaches of covenant, and cited *Patton* v. *Evans*, 22 U. C. Q. B. 606; 9 U. C. L. J. 320; and referred to 10 U. C. L. J. 1.

Logie, Co. J.—I think that the Act of the first session of the Province of Ontario, gives jurisdiction in cases where the tenancy or right of occupation has been determined by a forfeiture for breach of covenant committed by the tenant. The second section gives the judge jurisdiction not only in cases where the tenancy has even determined by notice to quit, but also in all cases where it has been determined *by any other act whereby a tenancy*, or right of occupancy *may be determined, or put an end to*. These words are sufficiently comprehensive to include cases where the tenancy has been put an end to, or become void in consequence of any breach of covenant by the lessee.

One of the breaches of covenant complained of, and relied on as having made the lease void is the alleged sub-letting or assignment of the residue of the term to Owen Senate. If he had gone into possession as sub-tenant or assignee of the term, it is very doubtful if the Act against tenants wrongfully holding over would enable the landlord to put him out of possession, on the ground that there is no privity between them. Under the Act of 4 Wm. IV., it was expressly held that *it* did not apply to a case where there was no privity between the owner of the land and the person in possession: *Bonser* v. *Boice*, 9 U. C. L. J. 213. Senate swears, however, that he is in possession under Sharp only for the purpose of taking care of the premises, and it is probably true that he has no legal right of occupancy. Then with regard to Sharp, two questions arise as to the sufficiency of the service on him: 1st, of the demand of possession, and 2nd, of the holding of this inquisition. In *Goodler* v. *Cook*, 2 Cham. Rep. 157, Sullivan, J. set aside the proceedings, on the ground that notice of the inquisition was not served personally on the tenant, he being at the time not resident on the premises. The clause under which that was decided is similar to section 4, of the Act of last session. If service of the notice of inquisition must be personal, or at the actual place of abode of the tenant, it seems to be much more necessary that service of demand should be personal; as the refusal to go out and reasons for the refusal, if given, must be stated in the application, which means to imply personal service.

I think, therefore, that service of the demand of possession must be personal, and that notice of the holding of the inquisition must either be served personally, or be left at the place of abode of the tenant; and that service on a person in possession of the premises, the tenant being resident elsewhere, is not sufficient. The application must be discharged for the reasons stated.

The Corporation of Belleville v. Fahey.

(In the County Court of the County of Hastings.)

Promissory note—Consideration—Corporation—Demurrer.

A promissory note, made payable to the Treasurer of, and endorsed by him to a Municipal Corporation to secure a balance due the Corporation on a past transaction is not void under the Municipal Acts.

Sherwood, Co. J.—The plaintiff in this case declares upon a promissory note made by the defendant to Thomas Wills, Treasurer of the Town of Belleville, and states that Wills, as Treasurer, endorsed and delivered the note to them.

The defendant demurs, and gives as a ground, that plaintiffs cannot legally contract by promissory notes, neither can they make, endorse, &c., or otherwise negotiate by or in promissory notes.

The only case I find bearing on this point, is that of the *Municipality of Westminster* v. *Foy*, 19 U. C. Q. B., 203. In that case the demurrer was sought to be sustained, on the ground that the corporation could not take more than 6 per cent. interest, if they could take interest at all. In the argument, the same or nearly the same objection was taken as in the present case, but inasmuch as it was taken at the argument, the court seemed to think it too late; but the learned Chief Justice in giving judgment remarked that, for all that appeared, the note sued on may have been given upon a transaction having nothing to do with banking or any kind of business prohibited, as for instance, money over paid to the defendant on a contract. He therefore was of opinion that a note given with such a consideration might be recovered. There are other matters besides these, such as rent, that would be a good consideration.

It does not appear here, that this note was given for a bad consideration, or in any kind of business prohibited to a corporation such as this.

I cannot see that the note having been made to the treasurer, and by him endorsed to the plain-